IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Criminal Appeal No.84/2003

Mukat Singh S/o Shri Bholaram @ Bhoriya
...accused-appellant
Versus
The State of Rajasthan through P.P.
...respondent

Date of Judgment :::: 12th May, 2006

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Biri Singh and
Shri M.P. Khandelwal for accused-appellant
Shri B.S. Chhaba, Public Prosecutor, for the State

By the Court:-

Accused-appellant Mukat Singh S/o Shri Bholaram @ Bhoriya, preferred this appeal under Section 374 (2) of the Code of Criminal Procedure challenging his conviction and sentence passed by the Special Judge, N.D.P.S. Act Cases (and Additional Sessions Judge No.1), Kota, in Special Sessions Case No.14/2002, whereby he was convicted and sentenced under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act of 1985') to ten years rigorous imprisonment and a fine of Rs.1,00,000/-, in default of payment of fine, to further undergo one month's additional rigorous imprisonment.

A Criminal Case bearing FIR No.22/2002 was registered at the police Station, G.R.P., Kota, against the accused-appellant under Section 8/21 of the Act of 1985, on the basis of recovery of contraband 'smack' weighing 100 gram from the possession of the accused-appellant. A

charge-sheet was filed against him. The trial court framed the charge but the accused denied the same, therefore, trial was conducted and after completion of trial the accused-appellant was convicted and sentenced by the trial court as mentioned above.

Learned counsel for the accused-appellant initially argued the case on merits but during the course of arguments, in view of overwhelming evidence about the recovery of contraband article from the possession of the accused-appellant, confined his arguments only for the purpose of reduction of sentence of imprisonment and fine. In support of his contention regarding reduction of sentence of imprisonment and fine, the learned counsel for the accused-appellant contended that the Parliament itself amended the provisions of the Act of 1985 and issued a Notification dated 19.10.2001, in exercise of power conferred by clauses (viia) and (xxiiia) of Section 2 of the Act of 1985. The said amendment came into force with effect from 2.10.2001 and as per said Notification the commercial quantity of smack/heroin is prescribed as 250 gram and minimum sentence of ten years rigorous imprisonment is provided where quantity of contraband article is 250 gram or above, whereas in the present case the contraband article was only 100 gram, for which no minimum sentence is prescribed and ten years rigorous imprisonment is the upper limit of the sentence. He contended that the learned trial court did not consider this aspect of the matter and awarded maximum sentence of

ten years rigorous imprisonment without considering the quantity of contraband article recovered from the possession of the accused-appellant in the present case, therefore, he contended that looking to the quantity of contraband recovered from the possession of the accused-appellant, the sentence of imprisonment awarded by the trial court to the accused-appellant may be reduced to the period of sentence of imprisonment of three years and nine months, already undergone by the accused-appellant.

Learned counsel for the State does not dispute that the provisions of the Act of 1985 have been amended by the Parliament vide Act No.9 of 2001, which came into force with effect from 2.10.2001 and as per the amended provisions where the contraband involved is lesser quantity than the commercial quantity then no minimum sentence of imprisonment is prescribed and the maximum sentence has been prescribed as ten years rigorous imprisonment and fine which may extend to one lac rupees. He further does not dispute that the commercial quantity of smack/heroin is prescribed as 250 gram whereas the contraband article recovered in the present case is only 100 gram.

I have considered the rival submissions and minutely scanned the impugned judgment as well as the record of the trial court and also gone through the provisions of the NDPS (Amendment) Act, 2001 (Act No.9 of 2001).

There is no dispute that the incident in the present case took place on 18.1.2002 i.e. much after the

amendment made in the Act of 1985, which came into force with effect from 2.10.2001.

On minutely examining all the facts and circumstances of the case and looking to the quantity of contraband article involved therein, I am of the view that the learned trial court has committed an error in awarding the maximum sentence of ten years rigorous imprisonment to the accused-appellant and I find it to be a fit case wherein sentence of imprisonment awarded by the trial court can be reduced. However, in the facts and circumstances of the case, I am unable to agree with the submission of the learned counsel for the accused-appellant for reduction of the sentence of imprisonment to a period of three years and nine months, already undergone by the accused-appellant, but in the facts and circumstances of the present case I am of the view that ends of justice will meet in case the sentence of ten years rigorous imprisonment and fine of Rs.1,00,000/- awarded by the trial court under Section 8/21 of the Act of 1985, is reduced to a period of sentence of 6 years rigorous imprisonment and fine of Rs.60,000/-.

Consequently, the appeal of the accused-appellant is partly allowed. The conviction of the accused-appellant under Section 8/21 of the Act of 1985 is maintained. However, the sentence of ten years rigorous imprisonment and fine of Rs.1,00,000/- awarded to the accused-appellant by the learned trial court is reduced to a period of sentence of 6 years rigorous imprisonment and fine of Rs.60,000/-, in default of payment of fine, to further

undergo two months additional rigorous imprisonment.

The appeal is partly allowed as indicated above.

(Narendra Kumar Jain) J.

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